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No. 208

JUN 30 1944

Supreme Court of the United States

October Term, 1944.

WILLIAM B. BELKNAP, Petitioner,

versus

ANN MANNING DeRIDDER McANDREWS,
MARTIN McANDREWS,
UNKNOWN HEIRS OF STANISLAUS P. M. C.
DeRIDDER, Deceased, AS UNKNOWN DE-
FENDANTS, Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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ROBERT P. HOBSON,
WOODWARD, DAWSON & HOBSON,
Of Counsel.

June 28, 1944.



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Supreme Court of the United States

October Term, 1944.

No. _____

WILLIAM B. BELKNAP, - - - - *Petitioner,*
v.

ANN MANNING DERIDDER McANDREWS,
MARTIN McANDREWS,
UNKNOWN HEIRS OF STANISLAUS P. M. C.
DERIDDER, DECEASED, AS UNKNOWN
DEFENDANTS, - - - - *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF AP- PEALS FOR THE SIXTH CIRCUIT.

*To the Honorable, the Supreme Court of the United
States:*

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This petition pertains to an action originally instituted by the petitioner, William B. Belknap, to quiet title (R. 1) to Kentucky real property which he purchased from the United States of America at public

auction on September 21, 1933, after it had been acquired by the United States at a public income-tax sale held on August 14, 1931. The respondents, Ann Manning DeRidder McAndrews and Martin McAndrews, filed an Answer and Counterclaim (R. 8) in such action attacking the validity of the distraint proceedings, denying that petitioner acquired title and seeking to quiet title in themselves as the alleged heirs of the taxpayer, Stanislaus P. M. C. DeRidder, whose property had been sold for Federal income taxes. Petitioner filed a reply (R. 25) in such action, alleging that, by reason of estoppel and laches, the respondents could not question either the distraint proceedings or his title. The District Court ruled that the distraint proceedings were valid, that the respondents were barred by estoppel and laches, and adjudged that title be quieted in the petitioner (R. 42).

Upon an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, that Court held that the sale on August 14, 1931, conducted by the United States, was invalid, because of the failure of the officer making the sale to comply with the applicable statute, and that by reason thereof title could not be quieted in the petitioner, whose petition was dismissed (R. 169). That Court, however, held that respondents could not quiet title in themselves, because, although they were not estopped, they were barred by laches. For that reason their cross-petition was dismissed.

The petitioner's petition for rehearing, as well as the respondents' petition for rehearing, were denied on April 3, 1944 (R. 207).

The key facts are found in a stipulation between the parties (R. 28). Briefly, they are that Stanislaus P. M. C. DeRidder, now deceased, failed to pay his Federal Income Taxes for the years 1924, 1925 and 1926. Pursuant to *Title 26, U. S. C. A.*, Sec. 3700, *et seq.*, distress warrants were levied against two adjoining tracts of land located in Oldham County, Kentucky, one containing 83.31 acres, referred to in the Record as Tract 2 (R. 66, 153), and the other 80.42 acres, referred to as Tract 3 (R. 66, 153).

Due notice was given by the Collector that on August 14, 1931, a public sale would be held. There was no bidder at said sale for any of the property, and the officer representing the Collector and the United States declared that it was purchased by him for the United States for the amount called for in the warrants and the expenses of the levy, namely, \$1,994.28.

The Collector duly conveyed said property to the United States of America on March 1, 1933, by recorded deed. It was stipulated that title passed to the United States if the sale on August 14, 1931, was legally held (R. 31). On September 21, 1933, the United States duly sold said property at public auction to the petitioner for \$6,500.00. The United States thereafter duly conveyed, by deed, said property to the petitioner, and it was stipulated that title passed to him, if said sale in 1931 was legally held (R. 31).

The respondents derived their rights, if any, as the alleged heirs of said deceased taxpayer, Stanislaus P. M. C. DeRidder.

Relevant facts, in addition to those contained in the stipulation, are as follows. Mr. DeRidder, the taxpayer, did not acquire the complete interest in Tract 2 and Tract 3 until August 7, 1915, when Griffith and his wife conveyed their undivided interest in such tracts to him (R. 160, 161). Tracts 2 and 3 were operated together as one farm by Mr. DeRidder as the absolute owner, and were treated as a single unit (R. 68, 93, 94, 96). The receipts and expenditures from them were lumped together (R. 96). Said tracts, together with an adjoining tract not sold at the tax sale, referred to in the Record as Tract 1 (R. 66, 153), were known to the people in the community as the DeRidder Farm, and they were considered as one farm (R. 48, 50, 52, 53, 60, 61, 62, 67, 70, 71, 78, 85, 93, 96, 97, 109, 114).

Mr. DeRidder was served in person on July 7, 1931, with a notice of the sale to be held on August 14, 1931 (R. 155). Avery Wyatt, DeRidder's farm manager, went to New York three times to tell him about the sale on August 14, 1931, two of the trips being made before the sale and one trip within four months after the sale, in addition to writing him about the proposed sale after he saw the advertisement posted in the post office (R. 100). On the trip after the sale, Wyatt told DeRidder all the circumstances attending the sale, including the fact that the United States bought the property because there was no bidder present at the sale (R. 100, 101).

The notice of sale was read at the time the August, 1931, sale was held (R. 99). No one was present at the

sale other than Wyatt and his wife (R. 98). Wyatt testified, without contradiction, that neither he nor his wife were interested in purchasing either, both or any part of Tracts 2 and 3 at any price (R. 99, 159). All of the four men representing the United States, who conducted the sale, were dead at the time of the trial (R. 77).

Wyatt advised DeRidder and Mrs. DeRidder, who has since re-married and is now the respondent, Ann Manning DeRidder McAndrews, that the sale on September 21, 1933, would take place. DeRidder attended it with his attorney (R. 101, 102). With the advice of said attorney, DeRidder bid against the petitioner, Belknap, on Tracts 2 and 3 (R. 132, 133).

DeRidder, in his petition filed with the Collector after the 1933 sale, asked that he be paid the difference between the tax debt and the sale price of the land, if the sales couldn't be set aside (R. 131).

On February 17, 1936, Miller & Chevalier, attorneys at Washington, D. C., representing DeRidder, wrote the Commissioner of Internal Revenue claiming that the sale on August 14, 1931, was invalid and passed no title to the United States or thereafter to Belknap, and asked whether or not the Treasury Department would oppose a bill by Congress to pay the DeRidder estate the excess of the purchase price over the tax debt, in consideration of a quitclaim deed to the United States (R. 139). The Commissioner answered by letter of March 6, 1936, in which he pointed out that the sale was a valid one, that DeRidder had failed to redeem the property within one year according to law, and that

he would not at that time state the Department's position on the proposed bill (R. 143, 144, 163).

No other moves were made by DeRidder or any of his alleged heirs to obtain possession of Tracts 2 or 3, or to contest the title of Belknap to the property, until presented in this action by a Motion to Dismiss, filed by them on June 16, 1941 (R. 6, 76). Belknap had no notice of the DeRidder claim to Tracts 2 and 3 until a short time before he filed this action (R. 75, 76).

After purchasing Tracts 2 and 3 at the sale on September 21, 1933, Belknap started a real estate development project about 1936, which included the 165 acres in Tracts 2 and 3 and 200 additional acres adjoining (R. 75). Over a period of approximately five years, Belknap spent on this project \$54,352.70, most of it in 1936 and 1937, on buildings, waterworks, roads, engineering and landscaping (R. 74, 75). Tracts 2 and 3 bore more than their proportionate share of the total expenditure (R. 75). All of this expenditure, except a comparatively small part, was made before he received notice from DeRidder or any of his alleged heirs, or from any source whatsoever, of any alleged defect in title, or of any claim by DeRidder or any of his heirs (R. 75, 76).

II.

**STATEMENT DISCLOSING BASIS UPON WHICH IT
IS CONTENDED THAT THIS COURT HAS JURIS-
DICTION TO REVIEW THE JUDGMENT, AND
THE REASONS RELIED ON FOR THE ALLOW-
ANCE OF THE WRIT.**

Rule 38 5. (b) of the Rules of the United States Supreme Court provides that, where a Circuit Court of Appeals has decided an important question of Federal Law which has not been, but should be, settled by the Supreme Court, this will serve as a basis of a petition for a writ of certiorari. The question presented by the Record below concerns the collection of income taxes by the United States and the legality of the action of Federal officials. Although the case deals specifically with the sale of real estate, the decision herein will vitally affect all sales of every other type of property by the United States to collect taxes. There is no more important public question at the present time than the ability of this Nation to collect, properly and efficiently, its revenues to meet the demands made upon the public treasury. The effect of the decision of the United States Circuit Court of Appeals, which refused to quiet title to property in a bona-fide purchaser for value from the Government after the lapse of many years and who had made substantial and valuable improvements thinking that he had good title, will be to make it exceedingly difficult to obtain bidders at any price for any kind of property sold by the United States in distraint proceedings

to collect federal taxes. This is true, because every prospective purchaser will be afraid that, if he buys the property, some slight irregularity might be raised years later to invalidate the sale. The natural result will be to place in jeopardy the power of the United States to collect its revenues.

The administrative practice of the various offices of Collectors of Internal Revenue has been contrary to the decision of the Circuit Court of Appeals in this case. Such officials have followed the practice where there are two distinct tracts of land levied upon under distraint proceedings and it is clear that one tract will not bring the amount of the tax due plus expenses and charges, to offer *both tracts only together* for the amount of the tax plus the expenses and charges, *without offering either tract separately*. The Judgment and Opinion of the Circuit Court of Appeals (R. 169, 170) in the case at bar held that such a sale would be invalid, even where it is clear and undisputed that, if the tracts had been offered separately, there would have been *no bid at any price*. It is vitally important that such officials have a clear, uniform and correct rule to follow.

The Opinion of the Circuit Court of Appeals (R. 174) states that *there is no decision by any court on the question involved*. It is one of great public importance which has not been, but should be, settled by this Court.

III.

QUESTIONS PRESENTED.

The three questions presented by the Record are as follows:

A. Was the Federal Income Tax Sale held on August 14, 1931, invalid? Petitioner contends that it was not. The answer to this question is determined by the answers to two other questions, which are—

1. Were Tracts 2 and 3 first offered separately? Petitioner contends that they were.
2. If they were not offered separately, would this invalidate the sale? Petitioner contends that it would not.

B. Are the respondents estopped to deny that petitioner has good title to the property sold at the tax sale? Petitioner contends that they are.

C. Does petitioner have good title because of the laches of respondents? Petitioner contends that he does.

We might point out that, if the Court agrees with petitioner as to the answer to any *one* of the three main questions, the Judgment of the Circuit Court of Appeals should be reversed and the Judgment of the District Court affirmed. Furthermore, it is necessary to agree with the petitioner only as to his contention as to either question A. 1 or A. 2 (but not both A.1 and A. 2) in order to agree with his answer to the question under A. above.

IV.

PRAYER FOR WRIT.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review and determination a full and complete Transcript of the Record and all proceedings of that Court had in this case, which is numbered and entitled on its Docket 9578, Ann Manning DeRidder McAndrews, *et al.*, Appellants, versus William B. Belknap, Appellee, to the end that this cause may be reviewed and determined by this Court, and that the Judgment of that Court be reversed, and for such further relief as to this Court may seem proper.

WILLIAM B. BELKNAP, *Petitioner,*

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June 28, 1944.

